

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

HAROLD E. JONES,  
Plaintiff,

vs.

COMMISSIONER OF  
SOCIAL SECURITY,  
Defendant.

Case No. 1:15-cv-465  
Barrett, J.  
Litkovitz, M.J.

**REPORT AND  
RECOMMENDATION**

Plaintiff filed a motion for attorney fees under the Social Security Act, 42 U.S.C. § 406(b)(1), seeking an award of \$6,200.00 in attorney fees under § 406(b) for work counsel performed before the district court. (Doc. 24). The Commissioner filed a response in opposition to the motion. (Doc. 25). The undersigned denied the motion subject to reconsideration on April 24, 2018, because plaintiff had not supported the motion with a time record from his counsel detailing the number of hours counsel spent on this case in the district court and an affidavit or other evidence from counsel in support of the requested hourly rate. Therefore, the Court could not determine from the record whether the hours counsel spent on this case and the requested hourly rate are reasonable. Further, it was unclear from the record why counsel had not submitted a fee petition under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d). Thus, the Court could not determine from the record whether it was appropriate to deduct from counsel’s § 406(b) award an amount equal to what plaintiff likely would have received had his counsel submitted an EAJA fee application.

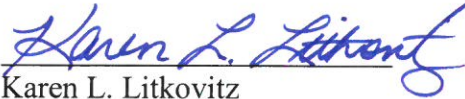
The April 24, 2018 Order gave plaintiff’s counsel 14 days to (1) show cause within 14 days why the § 406(b) fee award should not be reduced by the amount plaintiff likely would have received had his counsel filed an EAJA fee application, and (2) submit documentation as to

counsel's regular hourly rate and the number of hours counsel spent working on the case in the district court. Plaintiff's counsel has not responded to the Order to date. The Court therefore cannot determine from the record whether the requested award of \$6,200.00 in attorney fees under § 406(b) is reasonable.

**IT IS THEREFORE RECOMMENDED THAT:**

Plaintiff's motion for attorney fees under § 406(b) be **DENIED**.

Date: 5/15/18

  
Karen L. Litkovitz  
United States Magistrate Judge

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**NOTICE**

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).